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BY ECF

Hon. Paul A. Crotty
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Lisa Vasquez v. New York City Department of Education*, 22-cv-3360 (PAC)

Dear Judge Crotty:

I am the Assistant Corporation Counsel in the Office of the Corporation Counsel assigned to represent the Department of Education in the above-referenced case. It has come to my attention that the Defendant erroneously filed unredacted administrative orders that contain a minor's name and date of birth. I apologize to Plaintiff and the Court for this error and write to request that the entry, Status Report filed by Defendant on January 24, 2023, Dkt. No. 36, be sealed.

On January 24, 2023 the Defendant filed a status report with exhibits of the relevant administrative orders appended to it. Due to an oversight, the attached orders were not properly redacted. Attached to this letter as exhibits are the status report and the properly redacted orders. The administrative orders that were mistakenly filed contain confidential information, including the name and date of birth of the minor student, J.V., on whose behalf Plaintiff bring this action.

This information should not be made public in compliance with Rule 5.2(a). *See* Fed. R. Civ. P. 5.2(a).

Additionally, the orders contain “personally identifiable information” describing J.V.’s disabilities and educational progress. These materials are confidential under the Individuals with Disabilities Education Act (IDEA) and the Family Educational Rights and Privacy Act (FERPA). 34 C.F.R. § 99.3 (defining personally identifiable information under FERPA), § 300.32 (including a “list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty” as personally identifiable information under IDEA). Additionally, as the underlying administrative proceedings are presumptively closed to the public pursuant to 34 C.F.R. § 300.512(c)(2), all documents recounting the proceeding should themselves be deemed confidential. *Id.* (permitting parents to choose whether a hearing is open or closed to the public). “For these reasons, courts in this Circuit have routinely allowed administrative records underlying IDEA cases to be filed under seal to protect the privacy interests of minor child plaintiffs.” *L.B. v. New York City Dept of Ed*, 15-cv-3176, 2015 U.S. Dist. LEXIS 127081, *2 (S.D.N.Y. Sept. 22, 2015)(citing *C.L. v. Scarsdale Union Free Sch. Dist.*, 913 F. Supp. 2d 26, 30 (S.D.N.Y. 2012); *A.M. ex rel. Y.N. v. New York City Dep’t of Educ.*, 964 F. Supp. 2d 270, 277 (S.D.N.Y. 2013)). Therefore, the Defendant respectfully submits that this information should be filed under seal pursuant to *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (Countervailing factors weighing in favor of sealing include, *inter alia*, the privacy interests of those resisting disclosure).

Accordingly, the *Lugosch* standard has been met as protecting the privacy interests of the minor student and keeping confidential that child’s education history constitutes a “compelling reason” to seal the entry and outweighs the public’s interest in access. *See Lugosch*,

435 F.3d at 121 (countervailing factors include, among others, the privacy interests of those resisting disclosure). As such, Defendant respectfully requests that the Court seal the Status Report filed by Defendant on January 24, 2023, Dkt. No. 36.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Jay Cullen

Jay Cullen

Assistant Corporation Counsel

cc: **by ECF**
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2/1/23

The Clerk is directed to seal the exhibits attached to ECF#36. The exhibits will be made viewable to only the parties and the Court. SO ORDERED.

